

Message Text

CONFIDENTIAL

PAGE 01 BONN 05807 01 OF 02 101649Z

51

ACTION EUR-25

INFO OCT-01 ISO-00 EURE-00 SSO-00 NSCE-00 USIE-00 INRE-00

TRSE-00 EB-11 SAJ-01 OMB-01 CIAE-00 DODE-00 PM-07

H-03 INR-10 L-03 NSAE-00 NSC-07 PA-04 RSC-01 PRS-01

SP-03 SS-20 COME-00 ACDA-19 DRC-01 /118 W

----- 032184

O R 101633Z APR 74

FM AMEMBASSY BONN

TO SECSTATE WASHDC IMMEDIATE 1712

INFO USMISSION NATO BRUSSELS

CINCUSAREUR HEIDELBERG

CINCEUR VAIHINGEN

C O N F I D E N T I A L SECTION 01 OF 02 BONN 05807

DEPT. PASS TREASURY AND DOD IMMEDIATE

E.O.: 11652 GDS

TAGS: EFIN, GW

SUBJECT: OFFSET-AIRFIELD LANDING FEES AND UTILIZATION
CHARGES, AND LAND TAXES

REF: (A) STATE 72343; (B) BONN 5613

1. ON BASIS REFTTEL A, FOLLOWING AD REFERENDUM TEXT OF
ARTICLE 3 OF OFFSET AGREEMENT DEALING WITH SUBJECT, WITH
PROTOCOL NOTES AS INDICATED, WAS NEGOTIATED:

BEGIN QUOTE:

A. THE GOVERNMENT OF THE FRG WAIVES ANY REIM-
BURSEMENT CLAIMED FROM THE GOVERNMENT OF THE
UNITED STATES OF LAND TAXES THAT ARE PAYABLE BY
THE GOVERNMENT OF THE FRG FOR FEDERALLY-OWNED OR
LAENDER-OWNED REAL PROPERTY USED BY THE U.S.
FORCES OR THE CIVILIAN COMPONENT, THEIR MEMBERS
AND DEPENDENTS FOR THE PERIOD UP TO JUNE 30, 1975.

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PAGE 02 BONN 05807 01 OF 02 101649Z

B. THE GOVERNMENT OF THE FRG ASSUMES THE PAYMENT

OF LANDING FEES AND UTILIZATION CHARGES FOR THE
USE OF GERMAN CIVILIAN AIRFIELDS BY AIRCRAFT
EMPLOYED IN THE SERVICE OF THE U.S. FORCES FOR
THE PERIOD UP TO JUNE 30, 1975.

C. THE PAYMENTS TO BE MADE PURSUANT TO PARAGRAPHS
(A) AND (B) ARE ESTIMATED FOR THE PURPOSE OF THIS
AGREEMENT AT DM 20 MILLION. END QUOTE.

PROTOCOL NOTE FOR ARTICLE 3 READS AS FOLLOWS:
BEGIN QUOTE:

THE GOVERNMENT OF THE FRG ALSO WAIVES BEYOND
JUNE 30, 1975 ANY REIMBURSEMENT OF LAND TAXES
REFERRED TO IN ARTICLE 3(A) OF THE AGREEMENT AND
EQUALLY ASSUMES BEYOND JUNE 30, 1975 THE PAYMENT
OF LANDING FEES AND UTILIZATION CHARGES IN
ACCORDANCE WITH ARTICLE 3(B) OF THE AGREEMENT.

2. THE AGREED ARRANGEMENTS DO NOT AFFECT THE
LEGAL POSITION WITH RESPECT TO LAND TAXES TAKEN
BY THE GOVERNMENTS PARTIES TO THIS AGREEMENT.

3. THE REIMBURSEMENT BY THE GOVERNMENT OF THE
UNITED STATES OF LAND TAXES THAT ARE PAYABLE BY
THE GOVERNMENT OF THE FRG FOR FEDERALLY-OWNED
OR LAENDER-OWNED FAMILY HOUSING USED BY MEMBERS
OF THE U.S. FORCES OR OF THE CIVILIAN COMPONENT,
AND THEIR DEPENDENTS IS NOT AFFECTED BY THE
ARRANGEMENTS AGREED IN ARTICLE 3(A) OF THE AGREE-
MENT AND IN PARAGRAPH (1) OF THE PROTOCOL NOTE.

4. THE PAYMENTS WHICH HAVE ALREADY BEEN MADE BY
THE GOVERNMENT OF THE UNITED STATES ARE NOT
AFFECTED BY THIS AGREEMENT. END QUOTE.

2. FOLLOWING COMMENTS ARE GEARED TO SAME NUMBERING AND
LETTERING AS PARA'S OF ARTICLE AND PROTOCOL NOTE:
(A) PROVIDES FOR FRG WAIVER OF REIMBURSEMENT CLAIMED
FOR LAND TAXES RE ALL REAL PROPERTY USED BY THOSE
INDICATED. FORMULATION CLEARLY INCLUDES COMMISSARY,
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PAGE 03 BONN 05807 01 OF 02 101649Z

BANKS AND OTHER FACILITIES NOT ENCOMPASSED BY TERM
"NON-APPROPRIATED FUNDS ORGANIZATIONS" AND IS THUS
PREFERABLE, PARTICULARLY IN VIEW OF JANUARY 14, 1972
FEDERAL TAX COURT DECISION FINDING SUCH FACILITIES
NOT ENTITLED TO EXEMPTION FROM LAND TAX.

(B) VIRTUALLY IDENTICAL TO (A) OF GERMAN DRAFT REPORTED
REFTEL B.

(C) PROVIDES FOR PAYMENTS TO BE MADE BY FRG AS NECESSARY TO COVER OBLIGATIONS IN PARAS (A) AND (B) OF ARTICLE 3. USE OF WORD "ESTIMATED" IS DESIGNED TO ASSURE THAT IF, AS INDICATED TO BE FACT BY FRG, PAYMENTS FOR ARTICLE 3(A) AND (B) EXCEED DM 20 MILLION,

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PAGE 01 BONN 05807 02 OF 02 101651Z

51

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C O N F I D E N T I A L SECTION 02 OF 02 BONN 05807

PARA (C) WILL NOT IMPLY IMPOSITION OF ANY LIMITATION.

(1) OF PROTOCOL NOTE: FRG COULD NOT ACCEPT PLACEMENT OF THIS PROVISION INTO AGREEMENT ITSELF, AS AGREEMENT MUST BE SUBMITTED TO BUNDESTAG BUDGET COMMITTEE AND CANNOT, FOR PRESENTATIONAL REASONS, INVOLVE ANY UNDERTAKINGS EXTENDING BEYOND JUNE 30, 1975, THE END OF THE TWO YEAR PERIOD COVERED BY OFFSET AGREEMENT. PROTOCOL NOTE, WHICH FRG ASSURES US IS EQUALLY BINDING ON FRG TO AGREEMENT ITSELF, MAY WELL NOT BE SUBMITTED TO BUNDESTAG; THEREFORE, PROVISION FOR THIS UNDERTAKING IN PROTOCOL NOTE IS ACCEPTABLE TO FRG AND MEANS THAT FOR AN INDEFINITE PERIOD BEYOND JUNE 30, 1975 FRG WILL NO

LONGER LOOK TO USG FOR ANY PAYMENT OF FEES AND CHARGES
RE RHEIN/MEIN, STUTTGART/ECHTERDINGEN OR ANY OTHER
CIVILIAN AIRFIELD USED AS INDICATED IN ARTICLE 3(B) OR
REIMBURSEMENT FOR LAND TAXES (FAMILY HOUSING EXCEPTED).

(2) OF PROTOCOL NOTE: THIS PROVISION WAS ACCEPTED, FROM
U.S. POINT OF VIEW TO MINIMIZE DETRIMENTAL EFFECT OF
PARA (1) OF PROTOCOL NOTE ON LEGAL POSITION OF OTHER
SENDING STATES, AND FROM FRG POINT OF VIEW TO MINIMIZE
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PAGE 02 BONN 05807 02 OF 02 101651Z

DETRIMENTAL EFFECT OF PARA (1) RE FRG LEGAL POSITION
VIS-A-VIS SENDING STATES. IN VIEW OF COMMITMENT BY
FRG IN PARA (1) OF PROTOCOL NOTE, RESERVATION OF PARA
(2) IS MOOTED.

(3) OF PROTOCOL NOTE: MEANS THAT USG WILL CONTINUE AS
SINCE 1963 TO REIMBURSE FRG FOR LAND TAXES ON FAMILY
HOUSING USED AS INDICATED. USE OF "FAMILY" IS INTENDED
TO EXCLUDE U.S. LAND TAX PAYMENTS RE OFF-BASE BOQ'S,
WHILE USE OF TERM "HOUSING" EXCLUDES FROM THIS PROVISION
SEPARATE HEATING PLANTS, SEPARATE GARAGES, RECREATION
AREAS, AND ANYTHING ELSE NOT USED AS HOUSING ACCOMODA-
TIONS BY PERSONS INDICATED. FRG FINANCE MINISTRY
OFFICIALS INDICATED, HOWEVER, THAT WHEN HEATING PLANTS
OR GARAGES ARE LOCATED WITHIN FAMILY HOUSING BUILDINGS
AS INTEGRAL PART OF SUCH BUILDINGS AND ARE NOT AT
SEPARATE LOCATION, BASIS FOR ASSESSMENT OF LAND TAXES
ON SUCH BUILDINGS MUST BE ENTIRE BUILDING, INCLUDING
INTEGRATED HEATING FACILITIES AND/OR GARAGES.

(4) OF PROTOCOL NOTE: VIRTUALLY IDENTICAL WITH SUGGESTED
LANGUAGE IN PARA 4(A) OF REFTEL A.

3. U.S. DELEGATION AGREED TO DELETION OF PARA (D) OF
PROTOCOL NOTE TO GERMAN DRAFT IN REFTEL (B) IN VIEW
OF FACT THAT BY REASON OF PARA (1) OF AGREED PROTOCOL
NOTE, U.S. IS BEING RELIEVED INDEFINITELY BEYOND JUNE
30, 1975 OF ANY OBLIGATION TO PAY FEES OR CHARGES FOR
PURPOSES INDICATED IN ARTICLE 3(B) OF AGREEMENT. THUS,
NEED FOR THIS PARAGRAPH, ORIGINALLY DESIGNED TO COPE
WITH EVENTUAL RE-NEGOTIATION OF FEES AND CHARGES SET
IN CURRENT AGREEMENTS FOR RHEIN/MEIN AND STUTTGART/
ECHTERDINGEN, HAS BEEN OVERTAKEN BY GERMAN COMMITMENT
TO COVER SUCH FEES AND CHARGES BEYOND JUNE 30, 1975;
CONTINUED INCLUSION OF THIS PROVISION NOW MIGHT IMPLY
THAT USG ANTICIPATES NON-FULFILLMENT BY FRG AT SOME TIME
IN FUTURE OF ITS COMMITMENT TO PAY BEYOND JUNE 30,
1975.

4. CONCLUSION: DELEGATION BELIEVES THAT PROVISIONS TO
REGULATE SUBJECT TAXES, FEES AND CHARGES ARE CONSIDER-

ABLY MORE SATISFACTORY THAN COULD BE EXPECTED AND
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PAGE 03 BONN 05807 02 OF 02 101651Z

SHOULD, FOR A LONG TIME TO COME, RELIEVE BOTH
CONTRACTING PARTIES OF LONG-STANDING LEGAL AND PAYMENT
PROBLEMS.

5. ACTION REQUESTED: USG APPROVAL OF QUOTED TEXT OF
ARTICLE 3 AND RELATED PROTOCOL NOTE BY OPENING OF
BUSINESS APRIL 11 SO THAT US DELEGATION CAN INDICATE
AT MEETING SCHEDULED FOR 10 A.M. APRIL 11, ITS AGREE-
MENT TO THIS TEXT.
HILLENBRAND

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Message Attributes

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